

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

B5

DATE: **DEC 26 2012**

Office: NEBRASKA SERVICE CENTER

FILE:

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry must be made to that office.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision; however, because the petition is not approvable, it is remanded for further action and consideration.

The petitioner seeks classification of the beneficiary as an "alien of exceptional ability," pursuant to section 203(b)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(A). The director determined that "[t]he labor certification...does not support the classification of an EB2 as the minimum entry requirements are not a bachelor's degree plus 5 years[] experience or a master's degree." The decision also states that "no representations have been made that the beneficiary has exceptional ability."

A review of the record confirms that the petitioner filed the instant petition on behalf of the beneficiary as an alien of exceptional ability, not as an alien who is a member of the professions holding an advanced degree. As the director failed to consider the evidence submitted under the correct classification, this matter will be remanded for a full adjudication of the petition on the merits. The director must issue a new denial notice, containing specific findings that will afford the petitioner the opportunity to present a meaningful appeal.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn; however, the petition is currently not approvable, and therefore the AAO may not approve the petition at this time. The petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.